



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 29, 2003

Chief Don Hatcher
City of Leander
P.O. Box 319
Leander, Texas 78646-0319

OR2003-3631

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181849.

The City of Leander Police Department (the "department") received a request for "all open records available for public view" concerning named individuals and locations. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note your assertion that certain responsive information, namely, case number 200393 was previously released to the requestor, in accordance with our decision in Open Records Letter No. 2001-2048 (2001). As the current request seeks certain information that is identical to a portion of the information previously requested and ruled upon by this office in OR2001-2048 (2001), we conclude you must rely on that ruling as a previous determination and release case number 200393 in accordance with OR2001-2048 (2001). *See* Open Records Decision No. 673 (2001) (so long as law, facts, the circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure).

Next, concerning a request for information that is not in possession of the department, it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies

only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. A governmental body is not required to obtain information not in its possession or to prepare new information in response to a records request. *See* Open Records Decision Nos. 445 (1986); *See also* Attorney General Opinion JM-48 at 2 (1983).

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.¹ The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Here, none of the submitted information involves juvenile conduct that occurred after September 1, 1997. Therefore, this information is not confidential pursuant to section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

¹ *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code).

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

After reviewing the information at issue, we conclude that it does not constitute information “used or developed in an investigation” under chapter 261. Therefore, we conclude that you may not withhold the information under section 552.101 in conjunction with section 261.201 of the Family Code.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution

Gov’t Code § 552.108(a)(1), (b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the requested information relates to pending criminal investigations. Assuming that case number 200244 pertains to an active investigation, we conclude that the release of this information “would interfere with the detection, investigation, or prosecution of crime.” *See* Gov’t Code § 552.108(a)(1), (b)(1). Notwithstanding, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex.

Civ. App. – Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)(court delineates law enforcement interests that are present in active cases). Thus, with the exception of the basic front page offense and arrest information, the department may withhold case number 200244 based on section 552.108 of the Government Code.

We next note that two of the submitted reports pertain to cases of criminal mischief and one pertains to criminal trespass, offenses for which the statute of limitations has expired. *See* Tex. Pen.Code Ann. §§ 28.03, 30.05 (West 2003); Code Crim. P. Ann. art. 12.02 (West 2003). Thus, you have not adequately explained how or why the release of case numbers 990573, 990599, or 200276 would interfere with the detection, investigation, or prosecution of crime. *See* Open Records Decision No. 434 at 3 (unless records show on their face that disclosure would interfere with law enforcement or prosecution, law enforcement agency must explain how release of particular records or parts thereof will do so). You also assert that release of these reports would reveal police investigative methods. We find, however, that the department has failed to show that the release of the remaining information would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.108(b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts unless information does so on its face). Therefore, the department may not withhold case numbers 990573, 990599, or 200276 under section 552.108(a)(1) or (b)(1).

However, we note that social security numbers contained within this information may be confidential under section 552.101 and federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, you should ensure that they were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In addition, these reports contain information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

However, a person has a special right of access, beyond the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect a person's privacy interests. Gov't Code § 552.023(a). In this case, the submitted information contains driver's license numbers, one of which belongs to the requestor, who has a special right of access to this information. Therefore, the department must withhold only the Texas driver's license number and license plate number, which we have marked, under section 552.130.

In summary, you must withhold the information we have marked under section 552.130 of the Government Code. The social security numbers contained within the responsive information may be confidential under section 552.101 of the Government Code in conjunction with federal Social Security Act. Case number 200244 may be withheld under section 552.108(a)(1) with the exception of basic information. All other information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

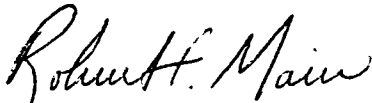
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Robert F. Maier
Assistant Attorney General
Open Records Division

RFM/seg

Ref: ID# 181849

Enc. Submitted documents

c: Ms. Carin Cabales
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(w/o enclosures)